

**Committee on House Administration  
Subcommittee on Elections**

**Hearing on the  
“Use of Robo-Calls in Federal Campaigns”  
Thursday, December 6, 2007, 11:00 a.m.**

**Statement of Chairwoman Zoe Lofgren**

Good afternoon. I would like to welcome the Elections Subcommittee members, our witnesses, and members of the public to the Subcommittee’s hearing on the “Use of Robo-Calls in Federal Campaigns.”

Political “robocalls” – or pre-recorded messages supporting a particular candidate or political position – are an increasingly common fixture of the American political landscape.

According to a study by the Pew Internet and American Life Project, roughly two-thirds of American voters received robocalls in the final weeks before last year’s election. Approximately 40 percent received between three and nine robocalls during the campaign. In the final week before the election, the Republican and Democratic congressional committees alone spent \$600,000 on robocalls in nearly 50 congressional districts.

Used responsibly, robocalls can be an efficient, low-cost means for candidates and advocacy group to reach out to their supporters or the public at large. Used irresponsibly or maliciously, however, robocalls can harass, confuse, or deceive the public about elections or other matters of pressing importance.

Unfortunately, we saw far too many examples of deceptive and abusive use of robocalls in the last federal election.

In congressional districts throughout the country, voters were deluged with robocalls at their homes. Often those calls included misleading information about the opposing candidate.

The robocalls usually did not identify the sponsor of the message until the very end of the recording, if at all. Several of the robocalls were designed to deceive voters about which candidate was responsible for the call.

The mere fact of receiving a robocall from a candidate, particularly at odd hours of the night or morning, may push an undecided voter to form a negative view of that candidate and vote for his or her opponent or avoid the election all together. As one voter in Nashville observed, “If I were on the fence, it would push me to the other candidate that wasn’t annoying me.”

This fact was not lost on the campaigns. Several of these misleading robocalls were placed to the same number with unrelenting frequency. It was not uncommon for voters in some districts to receive three calls in a four-hour period.

By and large, voters saw these calls as a nuisance. The Missouri Attorney General reported receiving more than 600 complaints about robocalls in the run-up to the last election.

Unfortunately, many voters responded to the deluge of robocalls by disengaging from the election entirely. With the airwaves already saturated with political advertising, robocalls drove voters away from meaningful participation in the democratic process.

Regardless of political affiliation, this trend is a cause for concern, particularly as our active voter participation still lags far behind that of other democracies.

Apart from their effect on the civility of political discourse and participation in elections, abusive robocalls represent a threat to the sanctity of the home.

As the Supreme Court has recognized time and time again, the government has a significant interest in protecting residential privacy. In her decision in *Frisby v. Schultz*, Justice O'Connor noted that "[a] special benefit of the privacy all citizens enjoy within their walls, which the State may legislate to protect, is an ability to avoid intrusions." *Frisby* is just one of many First Amendment cases noting that "the State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." (*Carey v. Brown*)

Notwithstanding that interest in protecting residential privacy, many federal laws do not apply to political robocalls. Those laws that do apply often go unenforced, or if enforced, impose modest civil penalties that some robocall firms simply regard as "the cost of doing business."

After the last election, state governments sought to fill that void by introducing over 100 bills after the election to address robocalls. To date, 23 states have enacted laws that deal with political robocalls. The varying approaches range from an outright ban, a ban on robocalls to numbers listed on the national Do-Not-Call registry, to required disclosures of the entity sponsoring and paying for the call.

Municipal governments have also responded. Just last month, two candidates in a local election in Seattle agreed to pay penalties for violating city campaign rules regarding the use of robocalls. However, for a total of 54,000 calls placed, one candidate paid only \$150 in penalties. With *de minimis* sanctions such as these, it is unclear whether laws function as effective deterrents.

Indeed, the use of deceptive robocalls seems to have continued unabated. In last months gubernatorial race in Kentucky, one candidate was the victim of a robocalls that falsely purported to be from a gay-rights advocacy group in support of that candidate. One voter reported that the calls were “the ugliest thing I’ve heard in an election probably in my lifetime.”

With incidents like these, it is clear that little has happened since November 2006 to address the problem with abusive robocalls. It is equally clear that, unless concrete steps are taken, the problem with robocalls will be at least as prevalent in next year’s federal elections.

With our panel of witnesses, the Subcommittee hopes to explore the nature of the problem with abusive robocalls, and how states, private actors, and the federal government can work together to strike a proper balance among First Amendment interests, residential privacy, and meaningful participation in the electoral process.